SINGAPORE REPORTS

GOH GIN CHYE & ANOR. v. PECK TECK KIAN REALTY PTE. LTD.

[C.A. (Kulasekaram, Chua & Rajah JJ.) May 20, 1982]
[Singapore – Civil Appeal No. 65 of 1981]

Practice & Procedure – Landlord & Tenant – Claim for possession against tenant – Failure of appellants to include party in trial below as second respondent – Action dismissed – Appeal – Appeal allowed – Subordinate Courts Rules, 1970, 0.49 r. 1(5) – Control of Rent Act (Cap. 266), s. 15(i) (g).

Landlord & Tenant – Claim for possession – Failure to include party in trial below as second respondent – Effect of.

The respondents, owners of the premises at 71 Kampong Bahru Road, Singapore, sought for possession of the premises against the appellants. They claimed, *inter alia*, that the appellants had sublet the premises in question to one *R.* at the monthly rental in excess of 110% of the reasonable rent of $26 per month under section 15(i) (g) of the Control of Rent Act. *R* was the third defendant in the lower court proceedings.

The learned Senior District Judge held that the relationship between the appellants and *R* was that of a chief tenant and sub-tenant and that all the purported 'licence' agreements were a sham and did not reflect the true relationship between them. Against this judgement the appellants appealed, citing only the respondents as a party to the appeal. *R*, who was a party in the trial below, was not cited as the second respondent.

Lai Kew Chai J. held (see [1982] 1 M.L.J. 117) that *R* was a necessary party as his status and legal rights would be directly affected by any substantive decision in the appeal. The appellants had failed to comply with Order 49 Rule 1(5) of the Subordinate Courts Rules and he dismissed the appeal without deciding on the substantive merits of the appeal.

The appellants appealed against the aforesaid Judgement. They contended that the learned judge had erred in dismissing the appeal from the District Court for want of parties instead of adjourning the matter for an application to be made to join *R* as second respondent and for extension of time to serve the proceedings on the appellants. In allowing the appeal, the Court of Appeal in an oral judgement delivered by Kulasekaram J. made the Order prayed for in the Motion and remitted the matter back to the High Court to complete the hearing of the District Court Appeal.

Cases referred to:

(1) *Purnell* v. *The Great Western Railway Co.* (1876) 1.Q.B.D. 636
(2) *Gatti* v. *Shoosmith* [1939] 3 All E.R. 916

COURT OF APPEAL.

M.Karthigesu (*V.K.S.Narayanan* with him) for the appellants.

Gan Choo Beng for the respondents.

P. Balagopal for *R.*

Cur. Adv. Vult.

Kulasekaram J. (delivering oral judgment of the Court) made the order prayed for in the Motion and remitted the matter back to the High Court to complete the hearing of the District Court appeal.

Order accordingly.

Solicitors: *V.K.S. Narayanan; Gan & Associates; Murugason & Co.*

LIM HOCK KIM v. SIM SENG QUEE

[D.C.A. (Choor Singh J.) April 2, 1980]
[Singapore – District Court Appeal No. 46 of 1979]

Land Law – Claim for vacant possession – Erection of houses on land – Whether by express or implied consent of landlord – Whether equity could intervene.

Landlord & Tenant – Claim for vacant possession of land – Erection of houses by tenant – Whether tenancy coupled with equity – Whether landlord estopped from recovering possession of land.

This was an appeal against the judgement of the learned Senior District Judge who allowed the plaintiff's claim for vacant possession of the land occupied by the defendant. The facts revealed that the defendant was let into the land which was then vacant in 1957 as a ground tenant at a monthly rent of $91.50. A Notice to Quit dated April 7, 1975 was served on April 9, 1975 purportedly determining the tenancy from May 31, 1975. At some time after the defendant was let into the land, he constructed five small wooden houses on the land. He sold four of them and granted the purchasers 30 year leases of the land on which the houses stood. In those leases the defendant described himself as 'owner' of the land. He retained possession of one of the said five houses together with the land on which it stood and which was the subject matter of the suit.

The defendant claimed that he was induced to believe that he could build on the said land and to occupy it for as long as he wished so long as the monthly ground rent was paid. He contended that the plaintiff was therefore estopped from recovering possession of the land in question.

Held, dismissing the appeal: there was no evidence of any express or implied consent given for the erection of the houses nor was there any evidence of inducement or encouragement by the landlord. There were no grounds for equity to intervene.

Editorial Note: The appellant/defendant's appeal against the above decision was dismissed by the Court of Appeal (Wee Chong Jin C.J., Kulasekaram and Rajah JJ.) in C.A. 37/80 on August 5, 1980. There was no written judgment.